IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Mat.Appeal.No. 107 of 2007()

OP.242/2004 of FAMILY COURT, KANNUR
.....

PETITIONER/RESPONDENT

ABDUL SALAM SOOPIYADAKATH,
AGED 34 YEARS, S/O AYISHA,
'AYISHA MANZIL', NEAR POST OFFICE,
VENGARA P.O.

BY ADV. SRI.M.SASINDRAN
SRI.M.V.BIPIN

RESPONDENT/ PETITIONER

KHAULATH ACHUMANTAKATH,
AGED 22 YEARS, D/O P.T.KUNHAHAMMED,
'BEEVI MANZIL, P.J.H.S. ROAD,
PUTHIYANGADI, MADAYI P.O.

BY ADV. SRI.T.A.SHAJI

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 17/12/2007, ALONG WITH CRA NO. 919 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID,JJ.

Mat. Appeal NO.107 OF 2007

Dated this the 17th day of December, 2007

JUDGMENT

Harun-Ul-Rashid, J.

This appeal is filed by the appellant/respondent against the judgment dated 20.2.2006 in O.P.No.242 of 2004 on the file of the Family Court, Kannur. The respondent herein filed the Original Petition under Section 2 (iv) and ((viii)(a) and (d) of the Dissolution of Muslim Marriage Act, 1939 (hereinafter referred to as "the Act"). The parties are referred to as the petitioner and respondent as in the court below.

2. The marriage between the petitioner and the respondent was solemnized on 21.5.1998 as per the customary rites prevalent in the community. The petitioner/wife narrated several incidents of cruelty meted out to her during her stay with her husband. According to her, her husband did not maintain her, that he neglected her and even failed to perform the marital obligations and that it was the cruel attitude of her husband that led her to file the petition for divorce. The petitioner had a further case that her husband tried to belittle her by saying he could have gone for a

marriage which would have fetched him more money. She also stated that she was made to sit outside the bedroom throughout the night and that the relatives of her husband also joined him in abusing her. The petitioner also stated that when the cruelty reached its zenith, she went to her parental house on 3.3.2001 and subsequently lodged a complaint against the respondent before the Magistrate's Court, Payyannur as C.C. No.705 of 2002 which is still pending consideration. She also filed a petition for maintenance which has been allowed by the court below and the same is at the execution stage.

3. The respondent denied the averments in the petition for divorce and contended that there is absolutely no cause of action for the petition. The evidence in the case consists of the oral evidence of the petitioner who was examined as PW.1. No oral or documentary evidence was adduced by the respondent. After considering the entire evidence, the court below came to the conclusion that the petitioner had assertively deposed that her husband paid scant regard for her even during his short visits to his native place, that he was constantly demanding more money from her and that he had even raised an allegation that he was poisoned by her witchcraft. The court below believed the version of the petitioner/wife and also found that there was no contra evidence against the evidence tendered by the wife on

material particulars. Considering the facts, circumstances and evidence, the court below held that the act complained of by the petitioner and proved by her version undoubtedly amounts to cruelty under Section 2(iv)(a) of the Act and, therefore, the petitioner is entitled to a divorce under Section 2 (iv) and (viii) of the Act.

Admittedly, the appellant has since married another woman. Still further, the parties have been living separately for quite long. Considering the entire facts and circumstances of the case, we, find no reason to interfere with the finding entered by the court below. The appeal is accordingly dismissed, confirming the finding entered by the court below granting divorce.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

sp/

KURIAN JOSEPH &
HAURN-UL-RASHID, JJ.

Mat.Appeal .NO

JUDGMENT

4TH DECEMBER, 2007